Finally, Mr. Marshall put forward the subtle argument that to send these two appellants to prison would make martyrs of them, and that from the public interest this would be unwise.

I am unable to accede to such a proposition. In the first place I should be sorry to believe that responsible public opinion would support the highly provocative action of the appellants in the present case. I should also be reluctant to accept that any considerable section of the public opinion of this State is so un-informed as to approve such conduct and waste sympathy on its perpetrators. But if, contrary to my belief, there is such a section of opinion, then I consider it my duty to disregard it.

Having regard to the facts and the background of this episode and the positions occupied by both appellants I have come to the conclusion that the learned District Judge was right in imposing prison sentences; and the terms themselves — three months' imprisonment in each case — cannot, in my view, be said to be inappropriate.

For the reasons that I have given both appeals are dismissed and the convictions and sentences affirmed.

*Appeals dismissed.*

Solicitors: *David Marshall; T. T. Rajah.*

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## LIM LIAN GEOK v. THE MINISTER OF INTERIOR, FEDERATION OF MALAYA

**[O.C.J. (Thomson C.J.) October 13, 1961]**

**[K.L. — Originating Motion No. 24 of 1961]**

**[C.A. (Hill and Good JJ.A., and Hepworth J.) January 4, 1962]**

**[K.L. — F.M. Civil Appeal No. 35 of 1961]**

*Constitutional Law — Citizenship — Deprivation of — Constitution of Federation of Malaya, Article 25 — Notice of intention to make order — Validity of Notice sent by Registrar-General of Citizens — Form of Notice — Content of Notice — Extent of power of Minister to order Inquiry — Conditions precedent necessary — Meanings of "disloyalty" and "disaffection" — Freedom of speech.*

On August 13, 1961, the Registrar-General of Citizens issued a Notice to the applicant (appellant) in the form provided under Rule 22 of the Citizenship Rules, 1960, notifying him of a proposal to make an order under Article 25 of the Constitution of the Federation depriving him of his citizenship and drawing his attention to Article 27(2) under which the applicant was entitled to have his case referred to a Committee of Inquiry. The grounds on which the order under Article 25 was proposed to be made were notified to the applicant, being that he did make:

(a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang di-Pertuan Agong and the Government of the Federation; and

(b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence.

On September 12, 1961 an order of prohibition *nisi* was granted to the applicant by Ong J. prohibiting the Minister of the Interior (respondent) from referring the applicant's case to a Committee of Inquiry. The grounds on which applicant obtained this order of prohibition *nisi* were, *inter alia*:

(i) that it was not competent for the Registrar-General to issue the notice that he purported to have issued under Rule 22 of the Citizenship Rules, 1960;

(ii) that the allegations made as to the basis for the Notice, assuming them to be true, were not a sufficient compliance with the requirements of paragraph (a) of Article 25(1).

**Held:** (1) under section 6 of the Second Schedule of the Constitution the Minister of Interior and Justice is authorised to make rules and prescribe forms for the exercise of his functions under Part III of the Constitution and under the Second Schedule. Rule 3 of the Citizenship Rules, 1960, provides that the Minister may appoint a Registrar-General of Citizens in order to give effect to the objects of Part III of the Constitution and the Second Schedule. It follows that when the Registrar-General acts under Rule 22 of the Citizenship Rules, and signs the Notice, he is acting not in the purported exercise of any powers delegated to him, for there is no delegation, but simply as the clerk or amanuensis of the Minister. The Notice issued to the applicant was therefore valid in form;

(2) though it is necessary for the Minister when making an order under Article 25 to have attained satisfaction on the matters laid down in Article 25(1)(a) and Article 25(3), it is not necessary that the Minister should have actually attained satisfaction before he takes steps to cause an inquiry to be held. However, before he takes such steps, the Constitution requires the fulfilment of four conditions which are (i) the Minister must have certain grounds of fact in mind; (ii) these grounds must consist of acts or speech; (iii) the person against whom the Order is proposed to be made is informed of the grounds; (iv) these grounds of fact should be capable, if made out, of showing as a matter of law disloyalty and disaffection towards the Federation. The four conditions were here satisfied and the order *nisi* would therefore be discharged.

Disloyalty and disaffection which would justify depriving a citizen of his citizenship discussed.

It was argued on the motion for discharge that the grounds of the order deprived appellant of his right of free speech.

**Held:** Article 10(1)(a) is not a bar to an allegation based on speech under Article 25(1)(a).

On appeal it was argued by the applicant before the Court of Appeal that —

(a) even assuming that the matters of complaint stated in the Notice to be true, they were not such as to be capable of attracting the altogether excessive penalty of deprivation of citizenship, having regard to the provisions of Article 25 of the Constitution;

(b) that the language of the Form made it clear that the Registrar-General purported to act and in fact acted as the delegate of the Federal Government and not as a mere amanuensis of the Minister;

(c) that the Minister's affidavit not having condescended to any particulars setting out the facts and circumstances on the faith of which he attained the requisite satisfaction, it was not possible to say whether there were good grounds or any grounds for such satisfaction; and

(d) that in any event the second ground stated in the Notice was by itself incapable under that Article of providing the required satisfaction to the Minister, because it merely alleged criminal offences against him which if proved would render him liable to punishment, in accordance with the law of the land and no more.

**Held:** (1) the Court of Appeal at this stage was concerned only with the question whether the Notice issued to the appellant was good in form and in content;

(2) as to the form, section 6 of the Second Schedule to the Constitution authorises the Minister to make rules and prescribe forms for the purpose of the exercise of his functions under Part III and the Schedule. The form itself is prescribed by the Minister under Rule 22 of the Citizenship Rules, 1960 and Rule 22 concerns a "Notice given by the Federal Government." There is, therefore, neither by accident nor design any delegation of the Minister's functions in fact or in law. The form of the Notice was therefore in order;

(3) as to content, all that Article 27(1) requires is notice of the ground on which the order is proposed to be made, i.e. whether it is ground (a), (b) or (c) of Article 25. No particulars or details are required to be given in the Notice. The Notice which was served on the appellant left him in no doubt about the ground alleged against him, for it clearly and unequivocally indicated that Article 25(1)(a) was intended. The Notice was therefore good in content.

Conditions which must be fulfilled in accordance with the wording of the Constitution before Notice is issued, as enunciated by Thomson C.J. in the High Court, discussed and approved.

*Cases referred to:—*

(1) *Carltons Ltd.* v. *Commissioners of Works & Ors.* [1943] 2 All E.R. 560.

(2) *Liversidge* v. *Sir John Anderson & Anor.* [1942] A.C. 206.

(3) *Nakkuda Ali* v. *M.F. De S. Jayaratne* [1951] A.C. 66.

(4) *Attorney-General for Canada & Anor.* v. *Hallet & Carey Ltd. & Anor.* [1952] A.C. 427.

(5) *The Queen* v. *Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co. Pty. Ltd.* (1953), 88 C.L.R. 100.

MOTION.

*R. Ramani* (*David Marshall* with him) for the applicant.

*Syed Othman* (Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Thomson C.J.:** This is a motion by the Minister of the Interior for the discharge of an order of prohibition *nisi* made against him on the application of one Lim Lian Geok on 13th September, 1961.

Enche Lim was born in China and came to this country in 1929. In 1951 he became a citizen of the then Federation of Malaya by registration and accordingly by reason of Article 28 is to be treated as a citizen by registration under Article 17 of the Constitution.

On 12th August, 1961, the Registrar-General of Citizens issued a notice to Enche Lim in the following terms:—

" WHEREAS it has been represented to the Federal Government that you LIM LIAN GEOK, a Citizen of the Federation of Malaya, have shown yourself, since 1957, by act and speech to be disloyal and disaffected towards the Federation of Malaya, in that you did make:

(a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang di-Pertuan Agong and the Government of the FEDERATION; and

(b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence.

AND WHEREAS the Federal Government proposes to make an Order under Article 25 of the Federation of Malaya Constitution depriving you of your Citizenship of the Federation of Malaya.

NOW, THEREFORE, I, Ibrahim bin Ali, the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government DO HEREBY GIVE YOU NOTICE that unless within one calendar month from the date of service upon you of this Notice, you inform me in writing that you claim that your case be referred to a Committee of Inquiry constituted for that purpose by the Federal Government under Article 27(2) of the said Constitution, the Federal Government will proceed to make the Order depriving you of your Citizenship of the Federation of Malaya."

On receipt of that notice Enche Lim wrote a letter to the Registrar-General in which he acknowledged the receipt of the notice and went on:—

" Though it purports to be in accordance with the Form provided under the Rules made by the Minister, I am advised that the power to deprive one of his Citizenship is under the Constitution vested in the Minister alone, and he is not empowered to delegate that function to any other official or authority under any of the sections of the Second Schedule to the Constitution. With the utmost respect, therefore, I wish to point out that there would appear to be no authority in you to issue the Notice.

I therefore respectfully request that the Notice be withdrawn and a proper Notice served on me if it is still the Federal Government's intention to deprive me of my Citizenship."

To that letter the Registrar-General replied as follows:—

" I am to invite your attention to the fact that the Notice dated the 12th day of August, 1961, which was sent to you is in accordance with Rule 22 of the Citizenship Rules, 1960. This Notice is issued by the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government and is in accordance with the Constitution."

On 12th September, 1961, Enche Lim's solicitor filed a Notice of Motion asking for an Order that the Minister of the Interior be prohibited from referring his case to a Committee of Inquiry under Article 27(2) of the Constitution "for the reasons *inter alia* — (1) that it was not competent for the Registrar-General to issue the Notice that he purports to have issued under Rule 22 of the Citizenship Rules; (2) that the allegations made as to the basis for the said Notice assuming them to be true, are not a sufficient compliance with the requirements of para (a) of Article 28(1) of the Constitution."

That Notice was supported by an affidavit in which Enche Lim set out what had happened and went on:—

" I am advised that the functions of the Federal Government under Article 25 can only be exercised by a Minister of that Government and that there was no power in the Minister further to delegate his powers to a Registrar-General or any other official.

I am further advised that the acts and conduct alleged against me, as being the cause of the proposed deprivation of my citizenship are not, in their very statement capable of falling within para. (a) of Article 25(1) and the Notice, therefore, even assuming it was issued

by the proper authority, is not in its content sufficient for the exercise by the Federal Government of its powers under the Constitution.

I wish further to add that as a Citizen my right to freedom of speech and expression is a fundamental liberty guaranteed by Article 10 of the Constitution and I have not infringed any of the restrictions that Parliament has by law imposed on that right."

The Motion was heard *ex parte* the following day by Ong J. who made an Order *nisi* in the terms prayed and ordered service on the Minister.

On 18th September, 1961, a Notice of Motion was filed on behalf of the Minister asking that the Order *nisi* be discharged on the grounds that:—

" (1) an order of prohibition does not lie against the decision of the Minister;

(2) if an order of prohibition does lie —

(a) the notice issued by the Registrar-General of Citizens was in the form prescribed by and upon the instructions of the Minister of the Interior and was in compliance with the requirements of Article 27 of the Constitution;

(b) the grounds shown in the notice was a sufficient compliance with the requirements of paragraph (a) of Clause (1) of Article 25 of the Constitution;

and that the said applicant may be ordered to pay the costs of this application."

That Notice was supported by an affidavit by the Minister the material portion of which reads as follows:—

" In pursuance of Article 27 of the Constitution I decided to cause a Notice, a copy of which is Exhibit A referred to in the affidavit of the applicant, to be sent to the applicant. The aforesaid Notice was in the form prescribed by me in rule 22 of the Citizenship Rules, 1960.

The Notice in the aforesaid prescribed form was on my decision sent to the applicant by the Registrar-General of Citizens."

A further affidavit by Enche Lim was then filed in which he set out certain facts relating to his professional career and political activities. I do not think the contents of this affidavit are very relevant to the present proceedings but in fairness to Enche Lim it should be said that in it he denied that he had acted "in any way suggestive of disloyalty or disaffection to the Government" and said he had always tried to "instil a sense of loyalty to the country" in Chinese students and urged them to learn the national language "as a means of promoting unity among the several races in the country". He also said that he had "always co-operated with and assisted the officers of the Government in its general policies on Education".

The Minister's Motion came on for hearing before me on 4th and 5th October, 1961, when I had the benefit of listening to most helpful arguments of very great clarity from Enche Ramani on behalf of Enche Lim and Tuan Syed Othman on behalf of the Minister of which I am happy to be able to take this opportunity of expressing my appreciation. In the event I was left in little doubt as to the course which should be taken. In view, however, of the importance of the issues involved I thought it advisable to take a little time for consideration.

Before proceeding further it will be convenient to refer to the relevant provisions of the Constitution.

The question of citizenship is dealt with in Part III of the Constitution (Articles 14 to 31, both inclusive).

Citizens are divided into three classes, that is to say citizens by operation of law, citizens by registration and citizens by naturalisation and Articles 14 to 22 set out the conditions governing the grant of citizenship of each of these classes.

Articles 23 to 28 deal with the termination of citizenship by renunciation or deprivation. In particular, Article 25 provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under the provisions of Article 17 "if satisfied that he has shown himself by act or speech to be disloyal or disaffected towards the Federation". The exercise of this power is subject to the provisions of Articles 25(3) and 27. Article 25(3) provides that no person shall be deprived of citizenship unless the Federal Government "is satisfied that it is not conducive to the public good that that person should continue to be a citizen" and Article 27 provides that before making an order depriving a citizen of his citizenship under Article 25 the Federal Government shall give to the person against whom the order is proposed to be made "notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry". If any person does require to have the case referred to a committee of inquiry the Federal Government shall, and in any other case may, refer his case to a committee of inquiry consisting of a Chairman and two other members appointed by the Government for that purpose. Where there has been such a reference the committee must hold an inquiry in such manner as the Federal Government may direct and submit its report to the Government and the Government "shall have regard to the report in determining whether to make the order".

The Second Schedule (as now amended by Act No: 10 of 1960) provides that the functions of the Federal Government under Part III are to be exercised by such Minister of that Government as the Yang di-Pertuan Agong may direct and in that connection the Yang di-Pertuan Agong has nominated the Minister of Interior and Justice (Legal Notification (New Series) No: 33 of 1957 as amended by Legal Notification No: 40 of 1959).

The Second Schedule contains a number of other provisions relating to citizenship of which I think only those contained in section 4 and section 6 are relevant here. Section 4 (as replaced by Act No: 10 of 1960) reads as follows:—

"The Minister may delegate to any officer of the Federal Government or, with the consent of the Ruler or Governor of any State, to any officer of the Government of that State, any of his functions under Part III of this Schedule; but any person aggrieved by the decision of a person to whom the functions of the Minister are so delegated may appeal to the Minister."

It would seem that there is some sort of drafting error here. There is no such thing as Part III of the Schedule and it may well be that the word "of" immediately following the words "Part III" is a misprint for "and". If this were so the effect of the section would be to give the Minister power to delegate any of his functions under Part III of the Constitution but until the enactment of amending legislation to clarify the point the question must remain on the same footing as the questions of what song the Sirens sang or what name Ulysses assumed when he hid himself among women, that is "puzzling" though perhaps "not beyond all conjecture."

Section 6 of the Schedule provides that the Minister may make rules and prescribe forms for the purpose of the exercise of his functions under Part III and under the Schedule. The rules at present in force are contained in the Citizenship Rules, 1960 (Legal Notification No: 310 of 1960). Much of these relates to the machinery for granting citizenship by registration and has no relevance to the present case. Rule 3, however, provides that the Minister may appoint a Registrar-General of Citizens "in order to give effect to the objects of Part III of the Constitution and the Second Schedule thereto". Rule 22 provides that the notice given by the Federal Government to a person against whom an order depriving him of citizenship is proposed to be made under the provisions of Article 27 shall be in a form to be signed by the Registrar-General of Citizens which was in fact used in the present case and the material portions of which have been quoted.

At this stage I would pause and observe that in my view the question of whether the powers of the Minister under Article 25 can be exercised by the Registrar-General of Citizens or any other official does not arise in the present case. If and when that question ever does arise it will have to be considered in the light of such cases as *Carltons, Ltd. v. Commissioners of Works & ors.*[1] and unless and until something is done by the Legislature to clarify the provisions of section 4 of the Second Schedule to answer the question will present a task of no small difficulty. Here, however, there has in fact been no delegation and no attempt at delegation of any power. It is true that the Notice addressed to Enche Lim bears the physical signature of the Registrar-General of Citizens, but it is now clear from the Minister's affidavit, which, of course, was not before Ong J. when he made the order *nisi*. that it was the Minister himself who caused the Notice to be issued. In the circumstances it is clear that it was signed by the Registrar-General not in the purported exercise of any powers delegated to him but simply as the clerk or amanuensis of the Minister.

This brings me to the main question at issue in the proceedings but before going further it is necessary to be clear as to just what that question is.

Here it is to be observed that much of the arguments employed in the case goes far beyond that question. In particular it does not have to be decided at this stage how far any order depriving a person of citizenship which has been made under Article 25 is open to examination by the Courts. When that question does arise presumably it will be considered in the light of the well-known cases of *Liversidge* v. *Sir John Anderson & anor.*,[2] *Nakkuda Ali* v. *M. F. De S. Jayaratne*[3] and *Attorney-General for Canada & anor.* v. *Hallet & Carey Ltd. & anor.*[4].

What has to be considered here is the extent of the power of the Minister to take a step the taking of which is a condition precedent to the making by him of an order of deprivation, that step being to cause the holding of an Inquiry under Article 27. Such an inquiry is required to be held and the Minister is required to have regard to its report which clearly implies that the report is something he must consider in deciding whether he has attained satisfaction for the purposes of Article 25. The matters regarding which he must have attained such satisfaction are, of course, that the person against whom the order is made "has shown himself by act or speech to be disloyal or disaffected towards the Federation" (Article 25(1)(a)) and that "it is not conducive to the public good that he should continue to be a citizen" (Article 25(3)). In other words, the acts or speech of the person in question must be of such a nature that they show him to be disloyal or disaffected and these qualities must be made out in such a way or to such a degree that the Minister is satisfied that it is not conducive to the public good that he should continue to be a citizen.

Now, it is clearly not necessary that the Minister should have actually attained satisfaction before he takes steps to cause an inquiry to be held for he is required to have regard to its report in determining, which means finally deciding, whether to make the order of deprivation. It is, however, nowhere stated in terms what his state of mental assent must be to such materials as may be before him before he is entitled to take steps to have the inquiry held. Enche Ramani has suggested that he must be in what he called a state of "*prima facie* satisfaction". The expression "have reasonable grounds for believing" might equally well be used. In my view, however, this question is beside the point because it is clear from the wording of the Constitution itself that four

conditions must be fulfilled. The first is that the Minister must have certain grounds of fact in his mind. The second is that these grounds must consist of acts or speech. The third is that the person against whom the order is proposed to be made should be informed what these grounds are. And the fourth is that these grounds of fact should be capable, if made out, of showing as a matter of law disloyalty or disaffection towards the Federation. The question of whether or not it is conducive to the public good that the person involved should be deprived of his citizenship is, of course, a consequential question that cannot arise until and unless it is made out that there have been acts or speeches which show disloyalty or disaffection and must depend on the degree of disloyalty or disaffection that is made out.

In the present case the first three of the conditions that have been postulated have clearly been fulfilled. The Minister has in his mind certain grounds of fact and these consist of speech. He has stated them and he could not have stated them if he did not have them in his mind and there is no allegation that he has stated them otherwise than in good faith. He has informed Enche Lim what they are. The only question remaining to be decided is whether these grounds as stated are such as to be capable in law of shewing disloyalty or disaffection.

I expressed that view as to the position in the course of discussion during the hearing of the case and I have since found support for it in the Australian case of *The Queen* v. *Australian Stevedoring Industry Board. Ex parte Melbourne Stevedoring Co. Pty. Ltd.*[5] In that case the High Court of Australia was concerned with proceedings similar to these in the present case to obtain an order of prohibition against the Australian Stevedoring Industry Board from holding an inquiry under the Stevedoring Industry Act, 1949, section 23 of which provides *inter alia* that if "after such inquiry as it thinks fit" the Board is satisfied that an employer is unfit to continue to be registered as such or has acted improperly the Board may cancel his registration. When the order *nisi* was made the inquiry had not yet commenced. In the event the order *nisi* was discharged for reasons which have no bearing on the present case, but the following passage occurs in the joint judgment of Dixon C.J., William, Webb and Fullagar JJ. (at p. 117):—

> "The first point to observe is that it must always be open to the board or its delegate to investigate the question whether a case exists for the exercise of its powers. There can be nothing wrong or unlawful in the board or its delegate entering upon an inquiry into any of the matters described by the three paragraphs of section 23(1). It is therefore evident that no prohibition could go to restrain the holding of an inquiry directed to any one or more of those issues. There can be no foundation for a writ of prohibition unless and until it appears, whether from the course of the inquiry or from the preliminary statement of the matters to which the inquiry is directed, that there can be no basis for the exercise of the power conferred by section 23(1) or that an erroneous test of the liability of the employer to the cancellation or suspension of his registration will be applied or that some abuse of authority is likely."

To proceed, the grounds which the Minister has in mind in the present case, which he has communicated to Enche Lim and upon which he proposes to invite the report of the Committee of Inquiry, have already been set out. They are that Enche Lim has made:—

> "(a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang di-Pertuan Agong and the Government of the FEDERATION; and
>
> (b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence."

These are allegations of speech. If made out, are they capable as a matter of law of showing disloyalty or disaffection towards the Federation?

In this connection I have derived no assistance from authority. The provisions of the Constitution relating to deprivation of acquired citizenship because of disloyalty or disaffection are by no means unique. Similar provisions are to be found in section 20 of the British Nationality Act of 1948, in section 23 of the British Nationality and New Zealand Citizenship Act of 1948, in section 10 of the Indian Citizenship Act of 1955, in section 21 of the Australian Nationality and Citizenship Act of 1948 and in section 16 of the Pakistan Citizenship Act of 1951. In none of these jurisdictions, however, so far as I have been able to advise myself has the extent of the powers of the appropriate authority been litigated.

Approaching the question then as *res integra*, I do not think any useful purpose will be served by attempting to frame exhaustive definitions of "disloyalty" and "disaffection". To do so would in effect be to do no more than to substitute other words for the words of the Constitution itself and in view of the difficulty involved this might well be dangerous. But though definition be undesirable if not impossible some discussion is desirable of at least some of the attributes of these qualities. "Disloyalty" clearly involves some failure of a duty or something inconsistent with a duty, but what duty? "Disaffection" clearly involves some lack of affection or dislike, but clearly bare dislike is not enough. There must be something in the way of active enmity or hostility. Some small assistance may be derived from the terms of the oath required to be taken by applicants for citizenship by registration, "I will be a true loyal and faithful citizen of the Federation" (1st Schedule), but to say that disloyalty involves a failure to keep that promise is only to state the problem in another way.

Probably the safest way in which to approach the problem is from a consideration of what

must be the object of disloyalty or disaffection. This is not the Yang di-Pertuan Agong nor is it the Constitution. It is the Federation itself which is the political unit consisting of the eleven separate States brought together and constituted into a whole by and in accordance with the Constitution. Now, it must be remembered that the individuals who go to make up that political unit enjoy the status of citizenship. The Federation does not, as do other sovereign States, consist of persons enjoying a common nationality and owing as subjects to a sovereign a duty of allegiance that springs from nationality. It consists of citizens who owe to the Federation itself a duty which may be analogous to that of allegiance but which springs not from nationality but from citizenship.

What we are concerned with here is disloyalty or disaffection which would justify depriving a citizen of his citizenship and on that it is I think clear that at least one essential element in such disloyalty or disaffection must be something more than mere disapproval of existing constitutional arrangements or of the policy of those who for the time being are in control of the Government. After all the Constitution is not something that has been brought down from the heights of Pisgah nor do the persons who for the time being constitute its Government and lay down its policy enjoy political immortality any more than they enjoy personal immortality. The Constitution itself contains *in gremio* the means by which it may itself be changed and the means by which what is popularly called the Government can be changed easily and without any fundamental damage being done, if such be the will of the citizens. Clearly, then, if a citizen merely dislikes and wishes to change any of the provisions of the Constitution or dislikes and wishes to change the Government of the day in accordance with the provisions of the Constitution designed to facilitate such a change or dislikes and wishes to have changed any part of the policy of Government and if he states his views publicly with a view to persuading his fellow citizens to operate the machinery of the Constitution in such a way as to bring about the changes he would wish to see them, to my mind, there can be no question of disloyalty or disaffection.

If, however, he acts and speaks in such a way as to excite his fellow citizens to disobey the laws rather than to change them; if he behaves in such a way as to endanger the domestic peace and tranquillity or the enjoyment of law and order which the Federation must assure to its citizens if it is to continue to exist; if it is the natural and probable consequences of what he says and does that some citizens may be moved to effect changes in the persons making up or in the machinery of Government otherwise than in the way provided for by the Constitution itself; then and in any one of such cases it would, to my mind, be open as a matter of law to say that that individual's conduct showed disloyalty or disaffection.

In my view, it is in the light of these observations that the grounds stated by the Minister as showing disloyalty or disaffection on the part of Enche Lim must be examined. But clearly they must be examined not in detail but as a whole. Loyalty like intention is something which lies in the heart of man and cannot be seen. It can be inferred only from his overt acts and speech and in ascertaining whether or not it is to be inferred what must be considered is the sum total of his overt acts and speech in so far as they are known and are relevant.

In the grounds alleged by the Minister these are individual allegations which considered in isolation would not in my view be capable of showing disloyalty or disaffection to the Federation. For example, it is very much to be doubted if "deliberate misrepresentation and inversion of Government education policy" goes much beyond describing substantial disagreement with that policy having regard to the ordinary modern language of political controversy. On the other hand to make emotional appeals of extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence is something which could well make out both disloyalty and disaffection on the part of anyone making such appeals. After all we cannot shut our eyes to the world in which we live, to the history of this country and the composition of its population. The Federation consists of eleven States each with a different history. But it also consists of a great number of individuals. I do not think I am trespassing any of the bounds set to the taking of judicial notice in saying that these individuals have come from many countries, that they speak many languages, that their *mores* and ways of living are very different, that they worship many Gods and that even those who worship the same God do so in different ways. For many years some sort of uniformity, some sort of community, was imposed on these people by the exercise of foreign suzerainty. Now that external pressure has been removed and for little over four years these people have had to exercise qualities of self-discipline, restraint and mutual tolerance without which the Federation of which they are members could not exist. The magnitude of the task involved may be appreciated by a consideration of the history of Great Britain since the disappearance of the Roman Colonial power some 1,800 years ago or of the history of India throughout the centuries. How then can it be said that the public use of language appealing to the heart and not to the head which is calculated to promote feelings of mutual ill-will and hostility among the people of various races who are citizens of the Federation to such an extent as to be likely to cause violence is not in its very

nature sufficient, if proved, to make out disloyalty and disaffection to the Federation?

Some point has been made of Article 10 of the Constitution which provides *inter alia* that every citizen "has the right to freedom of speech and expression" a right, however, which Parliament may restrict by law in the interest of security and to provide for the protection of the rights of the individuals. It is said that if Enche Lim is to be deprived of his citizenship because of speeches that he has made, a restriction is thereby imposed on his constitutional right of free speech. In my view the argument is entirely without substance. Article 25 says in terms that a citizen may be deprived of citizenship if he has shown himself to be disloyal or disaffected "by act or speech". It is the logical corollary to this argument based on Article 10 that disaffection or disloyalty can never be shown by speech unless such speech be of a sort specifically forbidden by Parliament a result which could not reasonably have been intended. The truth is that Article 10 says that subject to certain restrictions a man may say what he likes; it does not say that in no circumstances whatever can what he says be used in evidence against him.

In all the circumstances of the case and for the reasons which have been stated there would appear to be no reason in law why the proposed inquiry should not proceed. I would, therefore, discharge the order *nisi* made on 13th September, 1961, and order Enche Lim to pay the taxed costs of these proceedings.

*From the above judgment the applicant appealed to the Court of Appeal.*

COURT OF APPEAL.

*R. Ramani* (*Miss P. G. Lim and C. Selvarajah* with him) for the appellant.

*Syed Othman* (Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Hill J.A.:** On the 14th August, 1961, the appellant received the following notice: [His Lordship read the text of the Notice which also appears in the judgment of Thomson C.J. at p. 160 *supra*, and continued:].

After an exchange of letters with the Registrar-General, the appellant filed a notice of motion in the High Court at Kuala Lumpur that the Minister of the Interior be prohibited from referring the case to a Committee of Inquiry.

On the 13th September Ong J. made an Order *Nisi* that the Minister of the Interior, Federation of Malaya, be and is hereby prohibited from referring the case of the abovenamed applicant to a Committee of Inquiry under Article 27(2) of the Constitution until this Order shall be made absolute or be discharged.

The next step was the filing of a Notice of Motion by Federal Counsel on behalf of the Minister that the Order of Prohibition made by Ong J. should be discharged.

This application was supported by an affidavit of the Minister of the Interior and it is perhaps as well here to set out in full that affidavit.

"I, Dato Dr. Ismail bin Dato Abdul Rahman, a Federal Citizen of full age residing at 20B Maxwell Road, Kuala Lumpur, do hereby affirm and say as follows:—

1. I am the Respondent abovementioned. I am the Minister of the Interior in the Government of the Federation of Malaya.

2. On the direction of the Yang di-Pertuan Agong I am the Minister who exercises the functions of the Federal Government under Part III and the Second Schedule of the Federal Constitution.

3. In pursuance of Article 27 of the Constitution I decided to cause a Notice, a copy of which is Exhibit A referred to in the Affidavit of the Applicant, to be sent to the applicant. The aforesaid Notice was in the form prescribed by me in rule 22 of the Citizenship Rules, 1960. The aforesaid rules were published as Legal Notification No. 310 in the Federal Government *Gazette* of 1st December, 1960.

4. The Notice in the aforesaid prescribed form was on my decision sent to the applicant by the Registrar-General of Citizens of the Federation of Malaya who is a civil servant in my Ministry.

5. I am satisfied that the act and speech of the applicant justify my decision to proceed under Article 27 of the Federal Constitution."

On the 4th October, 1961, the parties appeared before the learned Chief Justice, and on the 13th of that month the Chief Justice discharged the Order *Nisi*. It is against that judgment that this appeal has been brought.

In this judgment, for reasons which I hope will be apparent later, I propose only to deal with one ground of appeal namely, to put it briefly, that both in its form and in its content the notice issued to the appellant was bad in law.

It was Mr. Ramani's contention, and I quote from the Memorandum of Appeal, that the matters of complaint stated in the Notice:

"x x x x

even assuming them to be true, were not such as to be capable of attracting the altogether excessive penalty of deprivation of citizenship, having regard to the provisions of Article 25 of the Constitution;

(b) that the language of the Form made it clear, notwithstanding the affidavit of the Minister, that the Registrar-General purported to act and in fact acted as the delegate of the Federal Government and not as a mere amanuensis of the Minister;

(c) that the Minister's affidavit not having condescended to any particulars setting out the facts and circumstances on the faith of which he attained the requisite satisfaction, it was not possible to say whether there were good grounds or any grounds for such satisfaction; and

(d) that in any event the second ground stated in the Notice was by itself incapable under that Article of providing the required satisfaction to the Minister, because it merely alleged criminal offences against him which if proved would render him liable to punishment, in accordance with the law of the land and no more."

At the risk of being tedious I think it is desirable in order to preserve a sequence to set out the relevant Articles of the Constitution and subsequent legislation leading up to the actual issue of the Notice.

The relevant portions of Articles 25 and 27 of the Constitution read as follows:—

"25(1). Subject to Clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 17 or a citizen by naturalisation if satisfied —

(a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation;

(b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

(c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced."

"27.(1). Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article."

It is necessary to bear in mind that Dato Dr. Ismail bin Dato Abdul Rahman, the Minister of the Interior, is the Minister who on the direction of the Yang di-Pertuan Agong exercises the functions of the Federal Government under Part III and the Second Schedule of the Federal Constitution (See Paragraph 2 of his Affidavit) and this is not a matter that is in issue.

These functions the Minister has never delegated and therefore it is unnecessary to consider section 4 of the Second Schedule to the Constitution nor the drafting or printing error that occurs in this section.

I will endeavour to deal first with the form of the Notice. Section 6 of the Second Schedule authorises the Minister to make rules and prescribe forms for the purpose of the exercise of his functions under Part III and the Schedule. Section 6 is as follows:

"Subject to Federal law, the Minister may make rules and prescribe forms for the purpose of the exercise of his functions under Part III and this Schedule."

By rule 22 of the Citizenship Rules, 1960 (L.N. 310, 1st December 1960 p. 535) the Minister prescribed the form of Notice which the appellant received. Rule 22 reads as follows:

"The Notice given by the Federal Government to a person against whom the deprivation order is proposed to be made under the provisions of Article 27 of the Constitution shall be in the Form Q set out in the Schedule to these Rules."

The Notice is found at Q in the Schedules to the Rules.

It was the appellant's contention that the Notice could only be in order if the Registrar-General had had any of the Minister's functions delegated to him under section 4 of the Second Schedule and that as there had been no such delegation by the Minister the Notice was void. In view of the wording of section 6 of the Second Schedule I might have found this argument persuasive but for the hiatus in it regarding the Minister's affidavit and Rule 22 of the Citizenship Rules. Rule 22 concerns a "Notice given by the Federal Government" and it clearly follows in my view that neither by accident nor design is there any delegation of the Minister's functions in fact or in law.

I am therefore of the opinion that in so far as its form is concerned the notice served on the appellant was in order.

There remains the question of its substance or content. The procedure is based on Articles 25 and 27 of the Constitution and at the point or stage at which this matter had reached when it came before the High Court I do not think that any Division of the Court has jurisdiction to investigate or consider the matter beyond the issue of the notice. As I see it, and I quote from the judgment of the learned Chief Justice, the question that "has to be considered here is the extent of the power of the Minister to take a step the taking of which is a condition precedent to the making by him of an order of deprivation, that step being to cause the holding of an Inquiry under Article 27".

Most of the arguments put forward in this Appeal go very far beyond that question in my view and consequently I do not propose to refer to them much less to endeavour to arrive at any decision regarding their merits.

There is no question but that the Minister's affidavit must be accepted. Before the Notice was issued certain conditions had to be fulfilled in accordance with the wording of the Constitution. They were set out with clarity and precision by the learned Chief Justice in his judgment and I cannot do better than repeat them here: He stated:—

"Four conditions must be fulfilled. The first is that the Minister must have certain grounds of fact in his mind. The second is that these grounds must consist of acts or speech. The third is that the person against whom the order is proposed to be made should be informed what these grounds are. And the fourth is that these grounds of fact should be capable, if made out, of showing as a matter of law disloyalty or disaffection towards the Federation."

The learned Chief Justice was of opinion, as I am, that the first three conditions were clearly fulfilled. There has, I am glad to state, been no allegation that the Minister acted otherwise than in good faith.

I therefore come to the final question to be decided whether the grounds stated in the Notice are in compliance with Article 25 and capable in law of shewing disloyalty or disaffection.

I feel myself that the grounds stated in the Notice could have been more happily worded and that the reference in (a) to the Yang di-Pertuan Agong and the Government should

have been omitted. With regard to (b), it is premature in my view to endeavour to form any opinion without details and particulars of the alleged emotional appeals whether they show the appellant to be disloyal or disaffected towards the Federation and to what extent. There are clearly circumstances when appeals of this nature could show that the maker of them was disloyal or disaffected.

It would appear too that the words used in Article 149(1)(c) of the Constitution were repeated in (b). I think this was unfortunate and it gave the appellant another cause for criticism of the Notice. All that Article 27(1) requires is notice of the ground on which the order is proposed to be made. In other words to set out whether it is ground (a), (b) or (c) of Article 25. No particulars or details are required to be given and in my opinion the notice should have been confined to a bare reference to ground (a) in Article 25(1). It is, I think, significant that though Article 27 refers to Articles 24, 25 and 26 and these Articles between them contain a number of grounds, the word "ground" is only used in the singular in Article 27 and I feel that to extend in this context the meaning of ground beyond that of basis or foundation to include particulars, details, circumstances or allegations would be incorrect. Nevertheless, I cannot conceive that on this point the appellant could have been left in any doubt that the above ground was alleged against him. What other meaning could the notice have conveyed to him. Surely not that he was in communication during a war with an enemy or that he had been sentenced to imprisonment or to a fine. In my view the Notice clearly and unequivocally indicated that Article 25(1)(a) is intended.

I am therefore of the opinion that both in form and content the Notice served on the appellant was a proper one.

Earlier in this judgment I stated that I would deal only with this question and there I will leave the matter. I find support for this approach and opinion in the Australian case of *The Queen* v. *Australian Stevedoring Industry Board. Ex parte Melbourne Stevedoring Co. Pty. Ltd.*[5], a case that was cited to and approved by the learned Chief Justice.

I would therefore dismiss the Appeal with costs to the respondent here and in the Court below.

**Good J.A.:** I have had the benefit of reading the judgment of Hill J.A. and I agree with all that he has said, but I take the opportunity of stating some additional reasons for arriving at the same result.

By Clause (1) of Article 25 of the Constitution the Federal Government is empowered to deprive of his citizenship a person who is a citizen by registration or by naturalisation on any of the grounds set out in sub-paragraphs (a), (b) and (c). Each of these grounds is capable of being broken down into a number of alternatives which do not very much differ one from another: for example, a person may be deprived of his citizenship under sub-paragraph (a) by reason either of his actions or of his words, where such actions or words have shown him to be either disloyal or disaffected towards the Federation. The sub-paragraph thus contains four alternative grounds, but in general it may be said that sub-paragraph (a) creates the ground of disloyalty, sub-paragraph (b) the ground of trafficking with the enemy during a war and sub-paragraph (c) the ground of conviction for a serious criminal offence.

Article 27 sets out certain conditions precedent to the making of an order under Article 25; and, as I see it, the only purpose for which the supervisory jurisdiction of the Court can be invoked at this stage is to ascertain whether the essential preliminary steps have properly been taken according to law. The Government is not yet committed to depriving the appellant of his citizenship; it has only announced its intention of doing so if the appellant does not within a specified time claim that his case be referred to a Committee of Inquiry as provided by Article 27. If the appellant does so claim — he has not yet done so but has elected to bring these proceedings instead — no order can be made affecting his status as a citizen until the Government has considered the committee's report. It is, therefore, premature to discuss the sufficiency of the ground on which it is proposed to make the order; if, indeed, this can ever be discussed forensically, as to which I express no opinion.

The Court at this stage is concerned only with the question whether the notice issued to the appellant under Clause (1) of Article 27 is good in form and in content.

As to its form, the validity of the notice has been attacked by the appellant on the ground that it was issued, without any delegation of power, by the Registrar-General of Citizens and not by the Minister by whom His Majesty the Yang di-Pertuan Agong has directed that the functions of the Federal Government under Part III of the Constitution shall be exercised. In my opinion this submission must fail. The Registrar-General has not purported to exercise any of the functions of the Federal Government. The notice recites that certain matters have been represented to the Government and that the Government proposes to make an order under Article 25 depriving the appellant of his citizenship. There is no exercise of function here by the Registrar-General. All that he has done is to act as the instrument or mouthpiece by which the intended action of the Government, and the ground upon which it is intended, has been communicated to the appellant. The discre-

tionary functions of the Government have been exercised by the Minister directed in that behalf by His Majesty under paragraph 1 of the Second Schedule to the Constitution. The obligatory function of giving notice to the person affected is expressed in the words of Article 27(1) as " ..... the Federal Government shall give ..... notice ..... " but such notice is not, in my opinion, invalidated by the fact that it is given by a civil servant "acting on behalf of the Federal Government" and signed by him, especially when the Minister has, by rules made by him under paragraph 6 of the Second Schedule, prescribed that form of notice. The Minister's affidavit of the 18th September, 1961 makes it perfectly clear that the making and issuing of the notice was his own act and not that of the Registrar-General.

As to the content of the notice, the wording of the ground of intended deprivation has been partly derived from Article 149 of the Constitution, which has nothing to do with deprivation of citizenship; but this does not, in my view, invalidate the notice so long as it gives the appellant sufficient notice, *at this stage*, of the ground upon which the Government proposes to rely.

The question is, how much information is the Government obliged to give, before an inquiry is held, as to the ground on which it is proposed to make an order of deprivation.

The relevant words of Article 27(1) are "notice in writing informing him of the ground on which the order is proposed to be made." The same expression, "the ground", occurs in the corresponding legislation of all the Commonwealth or former Commonwealth territories where the giving of such notice is required by law. The requirement is by no means universal: it is to be found in the legislation of the United Kingdom, India, New Zealand, Singapore and South Africa. In every case the Article or section in question is preceded by another corresponding more or less to our Article 25, in which are set out distinct grounds of deprivation. I understand the word "ground" in Article 27(1) to relate to the distinct grounds set out in Article 25, which are the only grounds upon which a person may be deprived of his citizenship. Article 27(1) and Article 25 must be construed in relation to one another, and I would construe the words of Article 27(1) — "informing him of the ground on which the order is proposed to be made" — as meaning "informing him on which of the grounds set out in Article 25 the order is proposed to be made." If I am right, it follows that it would have been sufficient if the notice had merely informed the appellant that it was proposed to deprive him of his citizenship on the ground of acts (or speech) showing him to be disloyal (or disaffected) towards the Federation. Anything further is surplusage, but there could be no misunderstanding in the mind of any person reading the contents of the notice that what was intended was deprivation on ground (a) in Article 25(1). In my opinion that is sufficient. The particular allegations will emerge at the inquiry if the appellant elects to ask for one. This is nowhere explicitly stated, but it is implicit in the procedure: there cannot be an inquiry unless there is something to inquire into, and it cannot be a proper inquiry unless the appellant is told what is alleged against him.

I am fortified in this view by a comparison of Article 27(1) with Article 151(1)(a). Article 151(1)(a) deals with restrictions on preventive detention, and provides that the authority on whose order any person is detained shall inform him of the grounds of his detention and (subject to the national interest) of the allegations of fact on which the order is based. So that a person who is deprived of his liberty by order of the Minister under the Internal Security Ordinance, 1960 may be told, for example, that he is detained on some such general ground as "subverting the youth of the Federation" or "disseminating pro-Communist propaganda"; but he is entitled in addition to a statement containing specific allegations of fact so that he can make adequate representations against his order of detention The omission of any such requirement from Article 27(1) suggests to me that it was not intended that, at this stage of the proceedings, the person affected should be informed of anything more than the bare ground of intended deprivation, and in my opinion this requirement has been sufficiently complied with by the contents of the notice in question in the present case.

For these reasons I would dismiss the appeal with costs.

**Hepworth J.:** I have had the advantage of reading the judgments of the President and of Mr. Justice Good. It would be a waste of time for me to say the same things all over again so I shall confine myself to saying that I agree with everything that they have said and that I have nothing to add.

*Appeal dismissed.*